

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:09-CR-216-FL-8

UNITED STATES OF AMERICA

v.

ZIYAD YAGHI,

Defendant.

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ORDER

This matter comes now before the court upon defendant's motion seeking determination regarding admissibility of Rule 404(b) evidence (DE # 1128), to which the government has responded in opposition. Good cause having been found for further development on the record the issues presented in support of and in opposition to the motion, the same now is referred to Magistrate Judge William A. Webb for conduct of evidentiary hearing at which he shall develop the record, including what facts exist to support the government's contention that defendant used proceeds from selling marijuana to fund violent jihad.

The government asserts in its response to the instant motion among other things that it is so evident the 404(b) evidence should be admitted, no hearing is necessary. This court disagrees. The government argues that evidence that defendant sold marijuana is part of "preparation or plan," because he used or planned to use the proceeds from the sale to fund jihad. Likewise, the government argues that evidence that defendant Yaghi shot guns at a shooting range is evidence of his preparation for jihad. The government's summary response, also devoid of supporting case law, does not without more advance the court to the government's conclusions that this sort of evidence clearly is admissible and no hearing is required.

In accordance with the foregoing, to secure simplicity in the trial proceeding and eliminate unjustifiable expense and consistent with Rule 2 of the Federal Rules of Criminal Procedure, and pursuant to 28 U.S.C. § 636(b)(1), that motion lodged on the docket at entry number 1128 now is referred for hearing to the magistrate judge. Magistrate Judge Webb shall issue his report and recommendation to the court sufficiently in advance of trial such that a party needing to object will have time to put written objection into the record if deemed necessary to advance the court's decision at trial on the issues presented.

The government shall signal to the court and defendant at trial when it will seek to introduce the type of evidence at issue here, and decision then will be made outside the presence of the jury, with benefit of the parties' briefs, the magistrate judge's report and recommendation, any written objection(s) thereto, and any new argument of the parties then sought to be made grounded in the context of the trial.

SO ORDERED, this the 3rd day of August, 2011.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

LOUISE W. FLANAGAN  
Chief United States District Judge